

City of Lynchburg

Airport Concession Disadvantaged Business Enterprise Program

for



Lynchburg Regional Airport

October 2007

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US Department of Transportation Federal Aviation Administration

Airport Concession Disadvantaged Business Enterprise Program - 49 CFR Part 23
City of Lynchburg
for the
Lynchburg Regional Airport

I. Objectives and Policy Statement (29 CFR Part 23.1)

The City of Lynchburg (hereafter "the City"), on behalf of the Lynchburg Regional Airport, has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 23. The City has received Federal financial assistance from the USDOT, and as a condition of receiving this assistance, the City has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the City to ensure that ACDBEs, as defined in Part 23, have an equal opportunity to participate in Airport Concession contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of Airport Concession contracts;
2. To create a level playing field on which DBEs can compete fairly for Airport Concession contracts;
3. To ensure that the ACDBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs;
5. To help remove barriers to the participation of ACDBEs in Airport Concession contracts, and
6. To provide appropriate flexibility to our airport in establishing and providing opportunities for ACDBEs.

Jewel Williams, Administrative Associate, Lynchburg Regional Airport, 4308 Wards Road, Suite 100, Lynchburg VA 24502, 434-455-6090 has been designated as the ACDBE Liaison Officer (ACDBELO). Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Federal Aviation Administration.

The City has disseminated this policy statement to the City Council members, the Airport Commission members, and all the components of our organization. The City will publicize this statement to the DBE and non-DBE business communities that perform work for us on Concessions contracts in the following manner:

1. This Policy statement will be prepared as a handout, and made available at pre-proposal conferences, and/or outreach meetings conducted by the City.
2. Copies of the Policy statement will be mailed to all of the agencies/organizations consulted during the development of the ACDBE goal methodology. This will

make the City's policy for the Lynchburg Regional Airport available to additional small, minority, and women business development agencies.

Chair, Lynchburg Regional Airport Commission

Date: _____

II. Subpart A - General

A. Objectives (23.1)

The objectives are found in the policy statement on the first page of this program.

B. Definition of Terms (23.3)

The City will use terms used in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

C. Applicability (23.5)

The City of Lynchburg is the recipient of federal airport funds authorized by 49 U.S.C. 47107, et seq. and therefore Lynchburg Regional Airport is subject to part 23.

D. Nondiscrimination and assurance requirements (23.9)

The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

In administering its ACDBE program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

The City acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE, and ACDBE Airport Grant Assurances.

The City will also include the following assurances, per 49 CFR Part 23.9, in all concession agreements and management contracts it executes with any firm after April 21, 2005:

(1) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(2) "The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements."

E. Compliance and Enforcement (23.11)

The City will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.107).

The City will comply with this part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122.

The City's compliance with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

Compliance reviews: The FAA may review the City's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the City's monitoring and enforcement mechanism, as appropriate. The FAA Office of Civil Rights may initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by the City may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

The following enforcement actions apply to firms participating in the City's ACDBE program:

- a. For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the USDOT or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.
- b. For a firm that, in order to meet ACDBE goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances

indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart C of this part, USDOT or FAA may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.

- c. In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a purported ACDBE has been certified. However, such certification does not preclude USDOT from determining that the purported ACDBE, or another firm that has used or attempted to use it to meet ACDBE goals, should be suspended or debarred.
- d. DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- e. DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the City's ACDBE program or otherwise violates applicable Federal statutes.

III. Subpart B - ACDBE Programs

A. Applicability (23.21)

The City is the recipient of federal airport funds and is required to submit this revised ACDBE program by October 1, 2007. Until this program is submitted and approved, the City will continue to implement the concessions DBE program that was previously in effect, except with respect to any provision that is contrary to the new concession regulations.

When the City makes significant changes to its ACDBE program, the City will provide the amended program to the FAA for approval prior to implementing the changes.

B. Administrative Provisions (23.23)

Policy Statement: The City is committed to operating its ACDBE program in a nondiscriminatory manner. The City's Policy Statement is elaborated on the first page of this program.

ACDBE Liaison Officer (ACDBELO): The City has designated **Jewel Williams, Administrative Associate, Lynchburg Regional Airport, 4308**

Wards Road, Suite 100, Lynchburg VA 24502, 434-455-6090 as its ACDBELO. In this capacity, the ACDBELO is responsible for implementing all aspects of the DBE program and ensuring that the City complies with all provisions of 49 CFR Part 23. The ACDBELO has direct, independent access to the City concerning ACDBE program matters. The ACDBELO, with the assistance of the airport staff, will administer the ACDBE program.

The ACDBELO has the overall responsibility for the development and administration of the ACDBE program. She is assisted, as may be required, by appropriate members of his staff as well as legal counsel and the City's DBE consultant (Ken Weeden and Associates Inc.). The City believes it has adequate staff and resources to administer its ACDBE program in compliance with the applicable regulations. The ACDBELO carries out the following responsibilities:

- a. Gathers and reports statistical data and other information as required by USDOT/FAA.
- b. Works with other members of the City to set overall goals.
- c. Ensures that requests for proposals are available to ACDBEs in a timely manner.
- d. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
- e. Analyzes the City's progress toward goal attainment and identifies ways to improve progress.
- f. Participates in pre-proposal meetings.
- g. Advises the City on ACDBE matters and achievement.
- h. Participates with the legal counsel and senior staff to determine contractor compliance with good faith efforts, if necessary.
- i. Serves as liaison to the Uniform Certification Program in the Commonwealth of Virginia.

C. Directory (23.23)

A copy of the DBE directory showing DBEs and ACDBEs is available by contacting the ACDBE Liaison Officer, or by going to <http://www.dmb.e.virginia.gov>.

D. Ensuring Nondiscriminatory Participation of ACDBEs (23.25)

The City will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities:

- The City will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others (23.25(c)).
- The City's overall goal methodology, and a description of the race-neutral measures it will take to meet the goals, is described in Section

23.25 and Attachment 1 and 2 of this plan. The goals are set consistent with the requirements of Subpart D (23.25(b), (d)).

- If the City projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25 (e) (1-2) and Attachment 1 and 2 of this plan (23.25(e)).
- The City will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs.
- The City will not use set-asides or quotas as a means of obtaining ACDBE participation (23.25 (f) (g)).

E. Reporting requirements (23.27)

1. Reporting to USDOT-FAA

The City will submit annually the USDOT-FAA Uniform Report of ACDBE Participation. These reports will reflect concession revenue actually received by all Concessionaires.

2. Information to be retained

The City will retain sufficient basic information about its ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of three (3) years following the end of the concession agreement or other covered contract.

F. Compliance and Enforcement Procedures (23.29)

The City will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23:

1. The City will bring to the attention of the US Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. The City will consider similar action under our own legal authorities, including responsibility determinations in future contracts. The City has listed the regulations, provisions, and contract remedies available to it in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (see Attachment 6).
3. The City will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g. payment actually made to ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by:
 - a. Requiring quarterly ACDBE participation reports.
 - b. Performing on-site visits on a periodic basis to interview key employees on control, management and ownership of ACDBE concessions.

The ACDBELO will track and compare ACDBE accomplishments with Concession Program goals and contract provisions to determine compliance. If it is determined that a problem exists, then the City will work with the Concessionaire in resolving the issue.

4. In its reports of ACDBE participation to FAA, the City will show both commitments and attainments, as required by the USDOT reporting form.

IV. SUBPART C – Certification and Eligibility

A. Section 23.31

The City of Lynchburg is a member of the Virginia Unified Certification Program. The Virginia Department of Minority Business Enterprise (VDMBE) administers the Unified Certification Program (UCP) for the Commonwealth of Virginia, which will make certification decisions on behalf of the City for ACDBEs.

The UCP will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.

The UCP's directory of eligible DBEs will specify whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

The UCP was to have reviewed the eligibility of currently certified ACDBEs to make sure that they met the standards of part 23. The UCP was to have completed these reviews by April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever was later. Also, prior to entering into a new contract, extension, or option with a currently certified ACDBE, the UCP was to have reviewed their eligibility at that time.

All currently certified ACDBEs were directed to submit by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

The UCP will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$47,780,000. The size standard for banks and other financial institutions is \$750 million in assets, for car rental companies it is \$63,710,000, and for pay telephone companies the standard is 1,500 employees (23.33). The personal net worth standard used in determining eligibility for purposes of part 23 is \$750,000. In calculating personal net worth, the following exclusions apply: the individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; the individual's equity in his or her primary place of residence; and other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm, to a maximum of \$3 million. Any person who has a personal net worth exceeding this amount is not considered a socially and economically disadvantaged individual, even if a member of a group otherwise presumed to be disadvantaged (see 23.3 - Personal Net Worth definition and 23.35).

The UCP will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a

firm, the UCP will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in our concessions program. The UCP is not obligated to certify a Part 26 DBE as an ACDBE if the firm does not do work relevant to our concessions program (23.37).

The UCP recognizes that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. The UCP will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. The UCP will analyze the ownership of stock of the firm, if it is a corporation. The UCP will analyze the bonding and financial capacity of the firm. The UCP will determine the work history of the firm, including any concession contracts or other contracts it may have received. The UCP will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. The UCP will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. The UCP will ensure that the ACDBE firm meets the applicable size standard (23.39(a)(b)).

The UCP acknowledges that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. The UCP recognizes that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h) ((23.39(c)(d)).

The UCP will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires (23.39(i)).

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, the UCP may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. The UCP will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (23.39(e)).

The UCP will use the Uniform Application Form found in appendix F to Part 26 with additional instruction as stated in 23.39(g).

V. SUBPART D - Goals, Good Faith Efforts, and Counting

A. Goals requirements (23.41)

The City will establish two separate overall ACDBE goals: one for car rentals and another for concessions other than car rentals. The overall goals will cover a three-year period and the City will review the goals annually to make sure the goals continue to fit the City's circumstances. The City will report any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, the City need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, the City needs not submit an overall goal for concessions other than car rentals. The City understands that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires.

The City's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

B. Consultation and Public Participation (23.43)

Before establishing the overall goal each year, the City will consult with current concessionaires, small business development organizations, and other community groups, without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the City's efforts to establish a level playing field for the participation of ACDBEs.

C. Requirements for overall goal submission to the FAA (23.45)

The Airport is a *non-hub primary* airport. As a condition of eligibility for FAA financial assistance, the City will submit its overall goals according to the following schedule:

Type of Airport	Initial Goal Due	Second Goal Due	Subsequent Goals Due
Large/Medium Hub Primary	January 1, 2006	October 1, 2008	Every 3 years on October 1
Small Hub Primary	October 1, 2006	October 1, 2009	
Non-hub Primary	October 1, 2007	October 1, 2010	

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the City will submit an appropriate adjustment to our overall goal to FAA for approval at least six months before executing the new concession agreement.

The City will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, or the "base figure". The second step is to examine all relevant evidence reasonably available in the City's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the City would expect in the absence of discrimination. Evidence may include, but is not limited to, past participation by ACDBEs; a disparity study; evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship).

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in *Attachment 1* to this program.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in *Attachment 2* to this program.

1. Projection of Estimated Race-Neutral & Race-Conscious Participation (23.45(f), 23.25(d-e))

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in *Attachments 1 and 2* to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41 (c).

2. Concession-specific Goals (23.25 (c) (e) (1) (iv))

The City will use concession-specific goals to meet any portion of the overall goal that the City does not project being able to meet using race-neutral means. Concession-specific goals are established so that, over the period to which the overall goals apply, they will cumulatively

result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

The City will establish concession-specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. *(We will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs (23.25 (f)). Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.)*

The City needs not establish a concession-specific goal on every such concession, and the size of concession-specific goals will be adapted to the circumstances of each such concession (e.g., type and location of concession, availability of ACDBEs.)

If the objective of a concession-specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the City will calculate the goal as a percentage of the total estimated annual gross receipts from the concession (23.25(e)(1)(i)).

If the concession specific-goal applies to purchases and/or leases of goods and services, the City will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire (23.25(e) (1) (ii)).

3. Good Faith Efforts on Concession-specific Goals (23.25(e) (1) (iii), (iv))

To be eligible to be awarded a concession that has a concession-specific goal, offerors must make good faith efforts to meet the goal. An offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the City's concession specific goals.

a. Demonstration of good faith efforts (26.53(a) & (c))

The ACDBELO is responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsive.

The ACDBELO will ensure that all information is complete and accurate and adequately documents the offeror's good faith efforts before the Airport commits to the concession agreement with the offeror.

b. Information to be submitted (26.53(b))

The City treats offeror's compliance with good faith effort requirements as a matter of responsiveness.

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

c. Administrative reconsideration (26.53(d))

Within 10 days of being informed by the City that it is not *responsive* because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. The concessionaire should make this request in writing to the following reconsideration official: **Mark Courtney, Airport Manager, Lynchburg Regional Airport, 4308 Wards Road, Suite 100, Lynchburg VA 24502.** The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

As part of this reconsideration, the concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The concessionaire will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the concessionaire a written decision on reconsideration, explaining the basis for finding that the concessionaire did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the USDOT.

d. Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

The City will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. The City will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, the City will require the concessionaire to obtain its prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the concessionaire fails or refuses to comply in the time specified, the City's contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

e. Sample Proposal Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of Lynchburg to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal

specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of ____ percent of (annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts.

D. Base of goals for concessions other than car rentals (23.47)

The base of the City's "non-car rental" concession goal will be the projected total gross receipts of all non-car rental concessions except as otherwise stated in 23.47.

E. Base of goals for car rentals (23.49)

The base of the City's car rental concession goal will be the projected total gross receipts of all car rental concessions except where the City uses the alternative goal approach of 23.51 (c) (5) (ii).

F. Expression and calculation of goals (23.51)

The City, in developing its overall goals and methodology, utilized the suggested procedures contained in Part 23.51, i.e. using DBE directories and census data NAICS/SIC Codes to establish the Base Figure for Step 1. Additionally, the regulations require consideration of additional "Step 2" adjustment factors, including the possibility of information from disparity studies and/or "the current capacity of DBEs to perform work in your concessions program, as measured by the volume of revenues DBEs have attained in recent years" were used as part of this methodology.

G. Counting ACDBE participation for car rentals (23.53)

The City will count ACDBE participation for car rentals in accordance with 23.53. Only participation from certified ACDBEs will be counted. Car rentals may count ACDBE participation in the following ways:

1. **Direct ownership arrangements**, which are not required by this program.
2. **Purchases or leases of vehicles**, the car rental company must submit to the City documentation of the good faith effort made to obtain ACDBE participation from other ACDBE providers of goods and services.
3. **Cost of repairing vehicles**, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.
4. **Other goods and services**, count participation as provided in part 26, §26.55 and 23.55 of part 23. In the event of any conflict between these two sections, §23.55 controls.

H. Counting ACDBE participation for non-car rentals (23.55)

The City will count ACDBE participation for non-car rentals in accordance to 23.55. Only participation from certified ACDBEs who perform a commercially useful function will be counted. For the purpose of this program commercially useful function has the same meaning as in part 26, §26.55(c), except the requirements of §26.66(c) (3) do not apply to concessions. Non-car rentals may count ACDBE participation in the following ways.

1. **Total value of gross receipts earned under a concession agreement.**
2. **Total value of a management contract or subcontract.** If the ACDBE enters into a sub-concession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.
3. **Joint Ventures.** Count a portion of the gross receipts equal to the distinct, clearly defined portion of the work that the ACDBE performs with its own forces.
4. **Services.** Count entire amount of fees or commissions charged by an ACDBE that are reasonable and not excessive as compared with fees customarily allowed for similar services.
5. **Goods.** Count 100% of the cost of goods obtained from an ACDBE manufacturer. Count entire amount of fees or commissions, that are reasonable and not excessive as compared with fees customarily allowed for similar goods. Count entire amount of fees or transportation charges for the delivery of goods required for a

concession that are reasonable and not excessive as compared with fees customarily allowed for similar goods.

I. Quotas and set-asides (23.61)

The City does not use quotas or set-asides in any way in the administration of this ACDBE program.

VI. Subpart E – Other Provisions

A. Existing concession agreements (23.71)

The City will not modify any existing concession agreements that were executed before April 21, 2005. When an extension or option to renew is exercised or when a material amendment is made the City will assess potential for ACDBE participation and may use means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

B. Privately-owned or leased terminal buildings (23.73)

The City does not have any privately-owned or leased terminal buildings.

C. Long-term exclusive agreements (23.75)

The City will not enter into any long-term exclusive agreements without approval from the FAA.

D. State and Local Law (23.77)

In the event that the City discovers that a state or local law differs from part 23, the City will take steps to comply with part 23 and the actions required in 23.77.

E. Local geographic preferences (23.79)

The City will not use local geographic preferences in administering its ACDBE program.

VII. Attachments

1. Methodology: Car rental goals
2. Methodology: Non-car rental goals
3. Lynchburg Regional Airport Organizational Chart
4. Sample pages from Virginia Department of Minority Business Enterprise DBE Directory
5. Virginia Department of Minority Business Enterprise DBE Certification Application

ATTACHMENT #1:

**FY 2008-2010 AIRPORT CONCESSION
DBE GOAL METHODOLOGY
(CAR RENTAL CONCESSIONS)**

ATTACHMENT #2:

**FY 2008-2010 AIRPORT CONCESSION
DBE GOAL METHODOLOGY
(NON-CAR RENTAL CONCESSIONS)**

ATTACHMENT #3:

Lynchburg Regional Airport Organizational Chart

ATTACHMENT #4:

**Sample pages from
Virginia Department of Minority Business
Enterprise DBE Directory**

ATTACHMENT #5:

**Virginia Department of Minority Business
Enterprise DBE Certification Application**